



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

CHUKWUMA E. AZUBUKO,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

CASE NO. 11-cv-2436 BEN (WVG)

**ORDER:**

- (1) DISMISSING ACTION WITH PREJUDICE  
(2) DENYING MOTION TO PROCEED *IN FORMA PAUPERIS* AS MOOT

[Docket No. 2]

On October 14, 2011, *pro se* Plaintiff Chukwuma Azubuko filed a Complaint against the United States. Plaintiff also filed a motion to proceed *in forma pauperis*. (Docket No. 2.) The Court decides the matters on the papers submitted. For the reasons outlined below, the Court DISMISSES the action with prejudice and DENIES Plaintiff's motion to proceed *in forma pauperis* as moot.

**BACKGROUND**

Plaintiff Chukwuma E. Azubuko previously filed several lawsuits in the United States District Court, District of Puerto Rico. Plaintiff alleges that the five district judges who presided over these actions—Judge Carmen C. Cerezo, Judge Gustavo A. Gelpi, Judge Salvador Casellas, Judge Aida Delgado-Colon, and Judge Francisco A. Besosa—incorrectly disposed of them. In particular, Plaintiff alleges that in *Azubuko v. Massachusetts' Board of Bar Overseers*, Case No. 07-CV-01916-CCC, an appeal was filed for which “nothing was done.” (Compl. at 1.) *Azubuko v. Empire Insurance*

1      Company, Case No. 07-CV-01917-GAG, was transferred to Massachusetts “where it died a natural  
 2      death or never saw the light of the day without moral qualm.” (Compl. at 1-2.) *Azubuko v. Gharoon*,  
 3      Case No. 07-CV-1688-ADC, and *Azubuko v. Campian*, Case No. 07-CV-01690-FAB, were dismissed  
 4      for improper venue. Lastly, *Azubuko v. Martinez*, Case No. 07-CV-01596, was dismissed for  
 5      Plaintiff’s failure to pay the filing fee.

6                  The present action was filed on October 14, 2011. (Docket No. 1.) The Complaint asserts  
 7      nineteen claims: (1) deprivation of well-established Constitutional rights; (2) negligence; (3)  
 8      intentional infliction of emotional distress; (4) misprision of felony, 18 U.S.C. § 4; (5) conspiracy  
 9      against rights, 18 U.S.C. § 242; (6) deprivation of rights under color of law, 18 U.S.C. § 245; (7) *ultra  
 vires* conduct or *quo warranto*; (8) deliberate indifference; (9) unusual cruelty in violation of the  
 10     Eighth Amendment; (10) material misrepresentation of facts; (11) failure to train as a theory of Section  
 11     1983 claims; (12) trespassers of the law; (13) denial of equal rights under law, 42 U.S.C. § 1981; (14)  
 12     federally protected activities, 18 U.S.C. § 245; (15) fraud and swindles, 18 U.S.C. § 1341; (16) perjury  
 13     general, 18 U.S.C. § 1621; (17) racketeering activities, 18 U.S.C. § 1961; (18) torture, 18 U.S.C.  
 14     § 2340; and (19) pattern and practice, 18 U.S.C. § 14141. The same day, Plaintiff filed a Motion to  
 15     Proceed *In Forma Pauperis*. (Docket No. 2.) The only named defendant in this action is the United  
 16     States. Plaintiff argues that the United States is vicariously liable for the district judges’ conduct.  
 17

## DISCUSSION

### I.      *SUA SPONTE* SCREENING AND DISMISSAL

19                  A complaint filed by any person proceeding, or seeking to proceed, *in forma pauperis* under  
 20      28 U.S.C. § 1915(a) is subject to mandatory *sua sponte* review and dismissal if the complaint is  
 21      frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief  
 22      from a defendant immune from suit. 28 U.S.C. § 1915(e)(2)(B); *Lopez v. Smith*, 203 F.3d 1122,  
 23      1126–27 (9th Cir. 2000). Having reviewed Plaintiff’s Complaint, the Court finds that the pleading  
 24      fails to state a cognizable claim for relief.  
 25

26                  The legal sufficiency of a complaint is tested under Federal Rule of Civil Procedure 12(b)(6).  
 27      *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). Under Rule 12(b)(6), dismissal is appropriate  
 28      if the complaint fails to state a facially plausible claim for relief. *Bell Atl. Corp. v. Twombly*, 550 U.S.

1 544, 556–57 (2007). That is, the complaint must state enough facts to raise a reasonable expectation  
 2 that discovery will reveal evidence of the claim. *Id.* at 556. Dismissal is also appropriate when the  
 3 complaint lacks a cognizable legal theory. *Robertson v. Dean Witter Reynolds, Inc.*, 749 F.2d 530, 534  
 4 (9th Cir. 1984). The court must assume the truth of all factual allegations and construe them in the  
 5 light most favorable to the plaintiff. *Thompson v. Davis*, 295 F.3d 890, 895 (9th Cir. 2002); *Cahill*  
 6 v. *Liberty Mut. Ins. Co.*, 80 F.3d 336, 337–38 (9th Cir. 1996). *Pro se* litigants are not “excused from  
 7 knowing the most basic pleading requirements.” *Am. Assoc. of Naturopathic Physicians v. Hayhurst*,  
 8 227 F.3d 1104, 1107 (9th Cir. 2000).

9       Here, Plaintiff’s Complaint is legally insufficient because it fails to state a cognizable claim  
 10 for relief. “It is axiomatic that the United States may not be sued without its consent and that the  
 11 existence of consent is a prerequisite for jurisdiction.” *United States v. Mitchell*, 463 U.S. 206, 212  
 12 (1983). Before a court may exercise jurisdiction over any suit against the government, there must be  
 13 “a clear statement from the United States waiving sovereign immunity, together with a claim falling  
 14 within the terms of the waiver.” *United States v. White Mountain Apache Tribe*, 537 U.S. 465, 472  
 15 (2003)(citations omitted). Such a waiver of sovereign immunity cannot be implied, but “must be unequivocally  
 16 expressed in statutory text.” *Lane v. Pena*, 518 U.S. 187, 192 (1996). Here, Plaintiff does not cite any  
 17 statute that would waive the sovereign immunity of the United States, nor is the Court aware of any.

18       Even if the district judges—rather than the United States—were named as defendants, Plaintiff  
 19 fares no better. The five district judges are shielded from Plaintiff’s claims by the doctrine of judicial  
 20 immunity. “[A] judicial officer, in exercising the authority vested in him, [should] be free to act upon  
 21 his own convictions, without apprehension of personal consequences to himself.” *Stump v. Sparkman*,  
 22 435 U.S. 349, 355 (1978) (internal quotation marks omitted). Consequently, “judges of courts of  
 23 superior or general jurisdiction are not liable to civil actions for their judicial acts, even when such acts  
 24 . . . are alleged to have been done maliciously or corruptly.” *Id.* at 355–56 (internal quotation marks  
 25 omitted). The only relevant inquiry for determining whether a judge is immune from suit is “whether  
 26 at the time he took the challenged action he had jurisdiction over the subject matter before him.” *Id.*  
 27 at 356. Here, Plaintiff does not allege that the district judges did not have jurisdiction over his  
 28 previous lawsuits, but rather disagrees with the manner in which they disposed of the lawsuits.

1 Accordingly, the Court finds that Plaintiff's Complaint fails to state a claim for relief. The  
2 Complaint is, therefore, **DISMISSED WITH PREJUDICE**.

3 **II. MOTION TO PROCEED *IN FORMA PAUPERIS***

4 Because Plaintiff's Complaint is dismissed, Plaintiff's motion to proceed *in forma pauperis*  
5 is **DENIED** as moot.

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7 **IT IS SO ORDERED.**

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9 DATED: November 28, 2011

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HON. ROGER T. BENITEZ  
United States District Court Judge

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